cipal case the association had acted as the state board of health in accordance with the act for forty-five years without question.

CONTRACTS—COMMUNICATION OF OFFER—MISTAKE IN TELEGRAM.—Butler wired an offer to buy 50 shares of stock, the telegram concluding, "Wire confirmation." Foley wired acceptance as to 44 shares. Butler wired confirmation of the 44. Foley, defendant, failed to deliver. He based his defense on the fact that the telegraph company left the word "subject" out of his telegram by mistake, and that, since Butler asked for an answer by wire, he made the telegraph company his agent and took the risk of mistake. *Held,* Foley's counter proposition was an offer, of which Butler's second message was an acceptance, and as the offerer makes the telegraph company his agent, Foley took the risk of mistake and is responsible on the contract. *Butler* v. *Foley* (Mich., 1920), 179 N. W. 34.

Ayer v. *Western Union Tel. Co.*, 79 Me. 493; *Western Union Tel. Co.* v. *Shotter*, 71 Ga. 760, and *Sherrerd* v. *Western Union Telegraph Co.*, 146 Wis. 197, are strong authorities for the doctrine that if the offerer communicates his offer by telegram he makes the telegraph company his agent, and is bound by the offeree's acceptance of the offer as delivered, providing the offeree had no reasonable grounds for knowing there was a mistake. An extreme application of the doctrine is seen in *Price Brokerage Co.* v. *C., B. & Q. R. R. Co.* (Mo., 1917), 199 S. W. 732, where the mistake changed the the price of potatoes from $1.35 to .35 per cwt., there being no potatoes on the market at anything like the latter figure, yet the court held the sender of the telegram bound by the contract. See, however, *Germain Fruit Co.* v. *Western Union Tel. Co.*, 137 Cal. 598. In *Durkee* v. *Vermont Central R. R. Co.*, 29 Vt. 127, and *Magie* v. *Herman*, 50 Minn. 424, both cited and relied upon in the principal case, the question being which copy of the message was primary evidence, it is said that the one who first uses the wire in a transaction makes the telegraph company his agent. But the principal case must stand on the narrower ground that the offerer makes the telegraph company his agent, irrespective of previous messages. The strongest argument for the above doctrine is to be found in the matter of commercial convenience. The cases opposed, which are at least as numerous and are stronger in technical legal reasoning, deny that the telegraph company is the agent of the offerer with power to make a different contract from that which he intended. If agent at all, it is only a special agent with specific authority to deliver that particular message and no other. These cases give the sender an action in contract or tort against the telegraph company, and if he is injured by the mistake, the sendee also has an action in tort against the company, but the sender is not bound by the sendee's acceptance of the changed offer. *Henkel* v. *Pape*, L. R. 6 Exch. 7; *Strong* v. *Western Union Tel. Co.*, 18 *Idaho* 389, 409; *Shingleur* v. *Western Union Tel. Co.*, 72 Miss. 1030; *Pepper* v. *Western Union Tel. Co.*, 87 Tenn. 554; *Postal Tel. & Cable Co.* v. *Schaefer*, 110 Ky. 907; *Mount Gilead Cotton Oil Co.* v. *Western Union Tel. Co.*, 171 N. C. 705. See also 1 MICH. L. REV. 588. Undoubtedly, the

principal case is correct in result, but not on the basis of agency. In contracts there is no offer until it enters the consciousness of the offeree, and the offer is that which reaches his consciousness, if he interprets reasonably and in good faith. Here the erroneous telegram reached the consciousness of the offeree, and was therefore the offer, he having no reason to doubt the correctness thereof.

CORPORATIONS—AUTHORITY TO GUARANTEE CONTRACT OF ANOTHER TO WHOM CORPORATION WAS SELLING GOODS IS IMPLIED.—A moving picture producing company contracted with D Company for costumes, also with P for lumber, to use in the production of a film. Upon P refusing further credit, D Company guaranteed payment of all bills P had or would have against the producing company. In a suit on the guaranty, *held*, contract of guaranty is within the implied powers of the company and is not *ultra vires*. *Wood's Lumber Co.* v. *Moore* (Cal., 1920), 191 Pac. 905.

A corporation has implied power to make all contracts which are essential to the successful prosecution of the business. *Bates* v. *Coronado B. Co.*, 109 Cal. 160; *Mercantile Trust Co.* v. *Kiser*, 91 Ga. 636. Or such contracts as are necessary and helpful to the conduct of its authorized business. *Timm* v. *Grand Rapids Br. Co.*, 160 Mich. 371; *Depot Realty Syndicate* v. *Enterprise Br. Co.*, 87 Ore. 560. Or which tend directly to promote the business authorized by its articles. *Kraft* v. *Brewing Co.*, 219 Ill. 205; *Horst* v. *Lewis*, 71 Neb. 365. If within the above principles, such a contract or guaranty or suretyship is not *ultra vires*. *Marbury* v. *Kentucky Union Land Co.*, 62 Fed. Rep. 335; *Wheeler* v. *Everett Land Co.*, 14 Wash. 630; *Winterfield* v. *Cream City Br. Co.*, 96 Wis. 239. For other cases see note, 27 L. R. A. (N. S.) 186. Whether a corporation's contract of guaranty is valid or *ultra vires* depends then on whether it directly furthers the authorized business or is too remotely in promotion of that business. In the following situations, as being a direct benefit, the guaranty was held valid: Loan and Trust Co. guaranteeing bonds of another corporation, upon sale thereof, *Broadway Natl. Bank* v. *Baker*, 176 Mass. 294; railroad company receiving bonds in payment of debt, sold them with guaranty, *Rogers Works* v. *Southern Ry. Assn.*, 34 Fed Rep. 278; sawmill company guaranteeing bonds of railroad company for construction of railroad to timber lands of sawmill company, *Mercantile Trust Co.* v. *Kiser*, 91 Ga. 636; land company, with authority to acquire right of way to mines, guaranteeing bonds of railroad running to mines in order to secure its construction, *Marbury* v. *Kentucky Union Land Co.*, 62 Fed. Rep. 335; banking company guaranteeing bonds of railroad in which it owns a controlling interest, *Central Railroad Co.* v. *Farmers' L. & T. Co.*, 114 Fed. Rep. 263; lumber company going surety on bond of contractor to whom it furnishes supplies, *Central Lumber Co.* v. *Kelter*, 201 Ill. 503; *Wheeler* v. *Everett Land Co.*, 14 Wash. 630; brewing company going surety on license bond of customer, *Horst* v. *Lewis*, 71 Neb. 365; *Timm* v. *Grand Rapids Br. Co.*, 160 Mich. 371; brewing company guaranteeing rent of customer, *Halloran* v. *Jacob Smidt Br. Co.*, 137 Minn. 141; *Depot Realty Syndicate* v. *Enterprise*